

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 294 of 2007()

CC.8/2002 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR
CRIME NO.55 OF 2001 OF ELOOR POLICE STATION.
.....

PETITIONER: ACCUSED

SHAJI THOMAS, AGED 40 YEARS,
S/O.THOMAS, CHERIPPARAMBIL HOUSE,
POOMALA KARA, VADAKKANCHERY VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM REP. BY SUB INSPECTOR OF POLICE,
ELOOR POLICE STATION.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 294 OF 2007

Dated this the 7th day of February, 2007

ORDER

The petitioner faces indictment in a prosecution, inter alia, under Sec.379 of the IPC. The crux of the allegations against him is that he had unauthorisedly removed sand from the river bed. Crime was registered. Investigation was conducted by the police. Final report has been filed. Cognizance has been taken. Procedure to be followed is one for warrant cases on police report under Chapter-XIX-A of the Cr.P.C. The petitioner has appeared before the learned Magistrate. He has rushed to this Court with this petition complaining that the allegations against him are baseless and the charge is groundless. It is prayed that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings.

2. I find no merit in the prayer. Powers under Sec.482 of the Cr.P.C. are to be invoked sparingly and in exceptional cases in aid of justice. In every case where discharge or

acquittal is possible, this Court will not invoke its extraordinary inherent powers under Sec.482 of the Cr.P.C. to quash the proceedings. It is for such indictree to appear before the learned Magistrate and claim discharge/acquittal in accordance with law. The petitioner has already appeared before the learned Magistrate also, it is submitted. I am, in these circumstances, satisfied that it is not necessary to call for all the records to this Court and consider whether charges are liable to be framed or whether the petitioner is entitled to be discharged on the ground that the charges are groundless. The petitioner must raise such contention before the learned Magistrate at the stage of Sec.239/240 of the Cr.P.C.

3. The learned counsel for the petitioner apprehends that unnecessary insistence may be made on the personal appearance of the petitioner. Till the charge is decided, it is not essential or invariable that the petitioner must be directed to be present physically before the learned Magistrate. The petitioner can apply for exemption until the court takes a decision that the

CRL.M.C.NO. 294 OF 2007 -: 3 :-

charges are liable to be framed against the petitioner.

4. This petition is, in these circumstances, dismissed with the above observations.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge